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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,092	10/23/2001	Robert Groppe	LNCP:111_US_	9349
7590	06/03/2004		EXAMINER	
Hodgson Russ LLP Intellectual Property Group Suite 2000 One M & T Plaza Buffalo, NY 14203-2391			NAGPAUL, JYOTI	
			ART UNIT	PAPER NUMBER
			1743	
DATE MAILED: 06/03/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/004,092	GROPP, ROBERT	
	Examiner Jyoti Nagpaul	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) 8 and 9 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 October 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date, _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>10/20/01</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein in view of Cross.

Bernstein describes a system for performing a plurality of independent analysis procedures simultaneously, each procedure employing a tissue sample and at least one process step for operating on that sample, multiple process steps are done in parallel processes. The system comprises of a robotic device for moving a tissue sample to various processing stations (13). The robotic arm is capable of moving the sample from a first one of the reagent trays to a second one of the reagent trays (See col. 36, lines 60-67, Refer to Fig. 2). The system also includes a processor/computer (15), which selects the next tissue sample to move, when to move it, and where to move it.

Bernstein fails to describe an optimized automatic program sequence according to which identically operating processing stations are defined as backup stations and are correspondingly utilized if a required processing station is occupied. The program takes into account a priority list of identically operating processing stations as backup stations. Bernstein also fails to describe the priority list for backup stations are definable by the user.

Cross discloses a sample handling system for manufacturing electrical wire harnesses, which includes a wire segment transport system for selectively transporting batches of wire segments to various processing stations in a simultaneously or sequential manner. The wire carrier (72) comprises a substantially rectangular open top container and a plurality of vertical divider (82), which are slidably received into the container. A system controller (102) oversees the operation of the system and transmits batches of computer process control data to the various processing stations. A batch may be sent to a station, if available. A duplicate or equivalent processing station is also available if said station has encountered failure or if occupied. The routing of said batches may be definable by the user (col. 4, lines 9-19, See Figure 3).

It would have been obvious to one of the ordinary skill in this art at the time of the invention by applicant to modify the system of Bernstein to include the features of Cross. Such a modification would have provided an optimized automatic program sequence according to which identically operating processing stations are defined as backup stations and are correspondingly utilized if a required processing station is occupied. The program would have taken into account a priority list of identically operating processing stations as backup stations and the priority list for backup stations. The backup stations are definable by the user because the system maximizes system efficiency and reliability. This modification would have been obvious to minimize the effect of failures in individual elements and also very advantageous in particular for treatment stations with very long processing times.

With respect to claims 5-7, Bernstein also teaches that the processor may determine the exact time for a step by generating a possible sequence of steps and examining that sequence for conflicts, adjusting that sequence in response to those steps with a specified range of times, and iterating the calculation over a plurality of possible sequences. The processor may also optimize the order in which the samples are moved to minimize the total time required by the system to complete the procedures, for example by generating a plurality of possible sequences, evaluating each sequence for shortest transport times and paths (col. 5, lines 8-22).

Allowable Subject Matter

Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art does not teach, or fairly suggest the calculation of the priority list is accomplished in consideration of current reagent fill levels in said processing stations and the priority list is calculated so as to achieve approximately the same reagent fill levels among said processing stations as recited in Claims 8 and 9.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Nagpaul whose telephone number is 571-272-1273. The examiner can normally be reached on Monday thru Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JN


Jill Warden
Supervisory Patent Examiner
Technology Center 1700